

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
HARVEY HAASE (for Mrs. John)
Haase),)
Appellant,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

PCHB No. 768

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter was brought before the Pollution Control Hearings Board through briefs submitted in lieu of hearing by Howard E. Phillips, attorney for appellant and Wick Dufford, Assistant Attorney General representing the Department of Ecology. Having reviewed the relevant materials in this matter, the Board makes the following

FINDINGS OF FACT

I.

On September 14, 1964, application was made to the Division of Water Resources, Department of Conservation, State of Washington,

EXHIBIT A

1 for a ground water permit to appropriate sixty gallons per minute
2 for the irrigation of eighty acres of land in the Odessa Ground
3 Water Sub-area. In the application, on the line "Name of Applicant,"
4 the name Harvey Haase was typed with ", for Mrs. John Haase" being
5 hand printed. The signature of Harvey Haase appeared on the line
6 "Signature of Applicant" while Mrs. John Haase's signature appeared
7 only on the line "Signature of legal landowner." Section 10 of
8 the application which inquired "what interest do you have in the
9 above-described property?" identified the applicant as "lessee."
10 Mr. Harvey Haase was and is tenant in possession of the land.

11 II.

12 Ground Water Permit No. 6867 was granted to "Harvey Haase for
13 Mrs. John Haase" with a priority date of September 14, 1964 affixed.

14 III.

15 In a letter dated April 15, 1973, the Department of Ecology
16 advised Mr. Haase that it would be necessary to install a measuring
17 device in his well to accurately determine the amount of water
18 being utilized under the permit. There was no response to the
19 reminder of the requirement sent by the Department to Mr. Haase in
20 December, 1973. Consequently, on April 30, 1974, an Order
21 (Docket No. DE 74-153) was issued to "Mr. H. Haase" to cease and
22 desist from the further withdrawal of ground water under Permit No.
23 6867 pending the installation of the required measuring device.

24 IV.

25 Presumably in response to the Department's Order, a flow
26 meter report card, signed by Elsie Bartalamay, as Executrix of the Estate

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1 of Lydia Haase deceased, was sent to the Department indicating that
2 the well was being used only for domestic and stockwater (the
3 Board assumes in disposing of this matter that Lydia Haase
4 and Mrs. John Haase are the same person.) On May 21, 1974, a
5 letter was sent to "Mrs. Haase" from the Department which read:

6 "If you no longer plan to irrigate said land,
7 please complete and return the enclosed
8 relinquishment form If no irrigation
is to be done from this well, no flow meter
will be required."

9 On May 23, 1974, Elsie Bartalamay "as Executrix of the Estate
10 of Lydia Haase, deceased" excuted a Relinquishment of Ground Water
11 Rights under Permit No. 6867. The relinquishment clearly states
12 that the signatory has "no further requirement for the rights to
13 withdraw the water" and relinquishes all rights to the State of
14 Washington. The relinquishment was notarized and forwarded for
15 Mrs. Bartalamay by counsel for appellant. Upon receipt of the
16 relinquishment, the Department of Ecology issued an Order of
17 Cancellation for Permit No. 6867 on November 20, 1974.

18 V.

19 On December 4, 1974, Harvey Haase appealed the Order of
20 Cancellation to the Pollution Control Hearings Board on the ground
21 that Elsie Bartalamay had no knowledge of his intent to utilize the
22 water for irrigation purposes and the relinquishment was filed in
23 error. Appellant argued further that title to the land on which
24 the well is located is held by nine individuals, in addition to
25 Mrs. Haase's estate, none of whom had acquiesced in the relinquishment.

26 VI.

27 The Department of Ecology does not oppose the reinstatement of

FINDINGS OF FACT,

S F No. 9976-A
CONCLUSIONS OF LAW AND ORDER

1 the permit but questions its power to do so unilaterally. The issue
2 presented to the Board is whether, under the facts of this case, the
3 relinquishment can be considered a nullity and hence void.

4 VII.

5 Any Conclusion of Law hereinafter recited which should be
6 deemed a Finding of Fact is herewith adopted as such.

7 From these Findings, the Pollution Control Hearings Board
8 makes these

9 CONCLUSIONS OF LAW

10 I.

11 Title rights in the land on which the well is located which
12 existed either at the time the Permit or the Order of Cancellation
13 was issued are not relevant to a determination of this matter.
14 The Board cites with approval the Department of Ecology's interpretation
15 of its statutory responsibilities with regard to ground water permits,
16 i.e., "It is the Department's position that ownership, right, title
17 or any other interests in real property where the water source is
18 located is not one of the factors that is to be considered in acting
19 upon an application to appropriate public ground water." Rights
20 to the ground water under a permit attach to the applicant for
21 the permit who need not be the legal owner of the land.

22 II.

23 If the Board were to determine that Harvey Haase was the permittee
24 of the right to withdraw water only as agent for Mrs. John Haase, then
25 rights derived from such agency terminated upon the death of Mrs.
26 Haase. In such event, there being no evidence in the record to the

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contrary, Mrs. Bartalamay, as Executrix of Mrs. Haase's estate, alone would have had the authority to retain or dispose of Mrs. Haase's rights as permittee.

III.

The Board, however, concludes that under the facts of this case Mr. Harvey Haase's relationship to the permit constituted an agency coupled with an interest which survived the death of Mrs. Haase. Without the signature or acquiescence of Mr. Harvey Haase, therefore, the relinquishment submitted by Mrs. Bartalamay was invalid and the Department erred in issuing its Order of Cancellation.

IV.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions, the Pollution Control Hearings Board enters this

ORDER

The Order of Cancellation of Permit No. 6867 issued by the Department of Ecology is vacated; Permit No. 6867 is reinstated with its priority date of September 14, 1964 retained. Mr. Harvey Haase is deemed to be the holder of the Permit for purposes of compliance with the Department of Ecology's applicable statutes and regulations.

1 DONE at Lacey, Washington this 14th day of October, 1975.

2 POLLUTION CONTROL HEARINGS BOARD

3 Chris Smith
4 CHRIS SMITH, Chairman

5 W. A. Gissberg
6 W. A. GISSBERG, Member

7 Walt Woodward
8 WALT WOODWARD, Member

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26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER